IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6627 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BUDHABHAI KALIDAS PRAJAPATI - Petitioner(s)
Versus
DISTRICT PRIMARY EDUCATION OFFICER & 2 - Respondent(s)

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Appearance :

MR SURESH M TRIVEDI for Petitioner(s) : 1,1.2.1
MR NIRAJ BUCH NANAVATY ADVOCATES for Respondent(s) : 1,
MS HANSA PUNANI AGP for Respondent(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH
Date : 20/06/2006
ORAL JUDGMENT

This petition under Article 226 of the Constitution was initially filed by Punjiben widow of Kalidas Bhaijibhai Gurjar for a declaration that petitioner-Punjiben was entitled to all the retiral benefits available to her deceased husband Kalidas Bhaijibhai Gurjar such as gratuity and pension and also to give the petitioner pension i.e. family pension.

2. The original petitioner based her claim for retiral benefits to her deceased husband and that family pension to her on the footing that her husband Kalidas Bhaijibhai Gurjar had rendered services as a teacher in the Government school at Chhipadi, Taluka Kapadwanj, Dist. Kheda between 11.3.1919 and 29.2.1936. The petitioner had also produced letters dated 30.12.1993 and 7.2.1994 from the District Primary Education Officer, Kheda District Panchayat, Nadiad to the original petitioner. While the letter dated 30.12.1993 (Annexure-K) called upon the original petitioner to produce the certificate from the primary school at Chhipadi regarding the services rendered by Kalidas Bhaijibhai Gurjar and also to produce any documentary evidence regarding payment of pension/gratuity, if any, paid earlier but subsequent letter dated 7.2.1994 (Annexure-L) indicated that Kalidas Bhaijibhai Gurjar was not covered by the pension scheme and, therefore, the petitioner's application for family pension cannot be granted.

3. Mr Trivedi, learned advocate for the petitioner submitted that since Kalidas Bhaijibhai Gurjar had rendered services as a teacher for a long period of 17 years immediately prior to his death, the respondent-authorities ought to have accepted the petitioner's claim and granted her family pension and also arrears of death-cum-retirement gratuity

otherwise payable to the deceased.

4. The petition is resisted by Mr Niraj Buch appearing for M/s. Nanavati Advocates for District Primary Education Officer, Kheda and by Ms Hansa Punani, learned AGP for respondent No.2 -Director of Primary Education and respondent No.3 -State of Gujarat in the Education Department. It is contended by the learned advocates for the respondents that the petition suffers from gross delay, laches and acquiescence. It is submitted by the learned advocates for the respondents that according to the petitioner, Kalidas Bhaijibhai Gurjar had rendered services between 11.3.1919 to 29.2.1936 and that even if the widow of the deceased was entitled to any benefits like family pension, such a belated claim cannot be entertained after a lapse of more than 50 years. It is further submitted that apart from the fact that the petition deserves to be dismissed on the ground of stale claim. Even otherwise, this Court may not exercise its extraordinary writ jurisdiction under Article 226 of the Constitution when the original petitioner Punjiben widow of Kalidas Bhaijibhai Gurjar has already expired during pendency of the petition and the claim is being made by Budhabhai son of the deceased employee. It is submitted that the notice for claim was for the first time given by Vishnuprasad Budhabhai, grandson of the deceased employee on 30.6.1990.

5. Having gone through the petition and the annexures thereto and having heard the learned counsel for the parties, it does appear that the claim raised in the petition is a very stale claim. Kalidas Bhaijibhai Gurjar is alleged to have rendered services in as many as 12 primary schools in Kapadwanj taluka in Kheda district between March 1919 and February 1936. It appears that in view of the notice sent by the grandson of the deceased, who is an advocate, the District Primary Education Officer had by his letter dated 30.12.1993 called upon the original petitioner (widow of the deceased) to produce certificates regarding the services rendered by the deceased. In spite of the said letter, the petitioner does not appear to have produced any such certificate and admitted that no pension or gratuity was paid to the widow of the deceased after death of the employee on 29.2.1936. In view of the above, the respondents cannot be expected to trace the old records regarding the services alleged to have been rendered by the deceased as far back as during the period between 1919 and 1936. Moreover, the widow of the deceased has already expired and the claim is being pursued by son of the deceased.

6. In view of the above facts, the petitioner has not made out any case of issuance of any writ of mandamus. The petition is, therefore, dismissed.

Rule is discharged.

(M.S. SHAH, J.)

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